

REMARKS

Applicant thanks the Examiner for the very thorough consideration given the present application. Claims 1-4 and 6-53 are pending in the application. New claims 40-50 are added. Claims 1, 3, 17, 18, 20, 23-25, 31, 33-35, and 37-39 are amended. The amendments to the claims are made for purposes of expediting prosecution and placing the claims in a better form for consideration on appeal should an appeal ultimately be necessary.

The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

OFFICIAL NOTICE

On pages 10-13, the Office Action concludes that Applicant failed to adequately traverse official notice, and as such, that official notice is now taken to be admitted prior art. Applicant believes, however, that he has respectfully traversed the official notice by specifically highlighting claimed features which are patentably distinguishable from what is disclosed in the art of record and allegedly known in the art in previous responses filed by Applicant. This notwithstanding, Applicant maintains that the claimed inventions are nevertheless patentable even assuming that the official notice is deemed prior art.

REJECTION OF CLAIMS 1-4 AND 6 UNDER 35 U.S.C. § 103

Claims 1-4 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a publication entitled *Web Ordering May Alter Role of Distributors*, National Home Center News, v. 24, n. 10, p. 23-25, by Carol Tice (hereinafter *Distributor Roles*) in view of an article entitled *Lowe's Launches New Superstores in N.E. Dallas, TX* (hereinafter *Lowe's Superstores*). This rejection is respectfully traversed.

At the outset, Applicant notes that the amendment to claim 1 has rendered moot the Section 103 rejection of claim 1. Applicant further submits that the inventions set forth in the pending claims are patentably distinct over *Distributor Roles* and *Lowe's Superstores* for at least the reasons set forth below.

Independent claim 1 recites "operating, in observance of said production parameters yielded by said production subsystem, a containerized liquid coating

production line capable of producing in a single batch a customer specified quantity that is not an even multiple of gallons, quarts and pints in any one of a plurality of particular, custom, colors with a precision in the addition of colorant to liquid coating base exceeding the precision readily obtainable by a conventional local retailer”; and “each said ultimate consumer obtains delivery of a customer specified quantity and color of containerized liquid coating product directly to a specified address in accordance with said customer order information.”

Applicant submits that neither *Distributor Roles*, *Lowe's Superstores*, nor any other art of record, alone or in combination, disclose, teach or suggest a method or system that enables liquid coatings to be produced and delivered to ultimate consumers/end users in customized produced-to-order quantities over a range of volumes unrestricted by the use of industry-standard sized containers such as five-gallon containers, one-gallon containers, one-quart containers, and one-pint containers. Advantageously, this enables an ultimate consumer to obtain a quantity of liquid coating that has been simultaneously produced as a single batch even for quantities exceeding industry-standard quantities. As a result of being produced in a single batch, the liquid coating that the ultimate consumer obtains will likely have a more uniform color consistency than had the ultimate consumer instead obtained the desired quantity by accumulating two or more separately mixed batches of liquid coating.

Applicant has not found any disclosure or teaching of either systems or methods in which a customer specified quantity of liquid coating is produced and delivered in accordance with an order. In contrast, paint and other liquid coatings are currently provided in industry-standard quantities (e.g., one gallon, one pint, one quart, or even multiples thereof, etc.). Even in those situations in which an ultimate consumer only wants a certain specific quantity but that specific quantity does not correspond with an industry-standard, the supplier rounds that specific quantity upwards to the nearest even multiple of gallons, quarts, pints, etc. In which case, the ultimate consumer is not being provided with a customized solution.

Further, implementation of this invention would represent a major paradigm shift from what is currently being done by others in the industry. Such a paradigm shift militates strongly against any finding of obviousness. Indeed, implementation of the

methods and/or systems of this invention would allow for the elimination, or at least significant reduction, of the need to retain large, expensive inventories at the point of sale (e.g., local retailers) while waiting for purchasers of that inventory. Given that such an advantageous result can be realized by implementing Applicant's invention, Applicant questions why this "allegedly obvious" invention has not been implemented by others.

Further, *Distributor Roles* appears to relate to electronically ordering pre-existing products (e.g., products from a catalogue, etc.), which, however, are not customized or produced-to-order. The cited references do not describe methods or systems in which ultimate consumers communicate directly with remote liquid coating suppliers or manufacturers and receive customized solutions in response to their orders.

At page 7, the Office Action states that the various names/types of actors do not functionally relate to the steps of the claimed method and that the subjective interpretation of the names of the actors do not patentably distinguish the claimed invention. But Applicant has amended claim 1 to clarify that orders for liquid coatings are placed by ultimate consumers of the liquid coating. Further, claim 1 is directed to "a business method for the direct supply for containerized liquid coating product inclusive of a plurality of particular, custom, colors to an ultimate consumer of the liquid coating product by a supplier remote from the ultimate consumer thereby enabling bypassing of local retailers." Accordingly, Applicant respectfully submits that the identity of particular actors/entities in the supply chain (e.g., "ultimate consumer", "remote supplier", "local retailers", "manufacturer", etc.) functionally relate to the manner in which various operations of the claimed method are carried out. In addition, MPEP 2143.03 states that all claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness of a claimed invention. Therefore, Applicant respectfully requests the Patent Office to consider each and every feature recited in the claims rejected for obviousness per MPEP 2143.03.

For at least the above reasons and the other relevant arguments of record (e.g., arguments set forth in Applicant's previous responses to office actions and request for continued examination), Applicant respectfully submits that *Distributor Roles* in view of

Lowe's Superstores does not render obvious claims 1-4 and 6. Accordingly, the section 103 rejection of claims 1-4 and 6 should be withdrawn.

REJECTION OF CLAIMS 7-10 UNDER 35 U.S.C. § 103

Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstores*. This rejection is respectfully traversed.

Claims 7-10 depend from independent claim 1 and are therefore allowable over *Distributor Roles* and *Lowe's Superstores* for at least the same reasons as those presented above with respect to claim 1.

For at least the above reasons and others arguments of record, Applicant respectfully submits that *Distributor Roles* in view of *Lowe's Superstores* do not render obvious claims 7-10. Accordingly, the section 103 rejection of claims 7-10 should be withdrawn.

REJECTION OF CLAIMS 11-16 UNDER 35 U.S.C. § 103

Claims 11-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstores* and disclosed art. This rejection is respectfully traversed.

Claims 11-16 depend from independent claim 1 and are therefore allowable over *Distributor Roles* and *Lowe's Superstores* for at least the same reasons as those presented above with respect to claim 1.

For at least the above reasons and the other relevant arguments of record, Applicant respectfully submits that *Distributor Roles* in view of *Lowe's Superstores* and disclosed art do not render obvious claims 11-16. Accordingly, the section 103 rejection of claims 11-16 should be withdrawn.

REJECTION OF CLAIMS 17-20 AND 23-25 UNDER 35 U.S.C. § 103

Claims 17-20 and 23-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstores* and disclosed art. This rejection is respectfully traversed.

Claims 17-20 and 23-25 depend from independent claim 1 and are therefore allowable over *Distributor Roles* and *Lowe's Superstores* for at least the same reasons as those presented above with respect to claim 1.

For at least the above reasons and the other relevant arguments of record, Applicant respectfully submits that *Distributor Roles* in view of *Lowe's Superstores* do not render obvious claims 17-20 and 23-25. Accordingly, the section 103 rejection of claims 17-20 and 23-25 should be withdrawn.

REJECTION OF CLAIMS 21, 22, AND 26-28 UNDER 35 U.S.C. § 103

Claims 21, 22, and 26-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstores* and disclosed art. This rejection is respectfully traversed.

Claims 21, 22, and 26-28 depend from independent claim 1 and are therefore allowable over *Distributor Roles* and *Lowe's Superstores* for at least the same reasons as those presented above with respect to claim 1.

For at least the above reasons and the other relevant arguments of record, Applicant respectfully submits that *Distributor Roles* in view of *Lowe's Superstores* do not render obvious claims 21, 22, and 26-28. Accordingly, the section 103 rejection of claims 21, 22, and 26-28 should be withdrawn.

REJECTION OF CLAIMS 29-34 UNDER 35 U.S.C. § 103

Claims 29-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstores* and further in view of an article entitled *Welcome Homes on the Virginia Beach Tour – Visit a premier colonial revival-style home, painstakingly built and restored*, by Ann Wright (hereinafter Colonial Restoration). This rejection is respectfully traversed.

Claims 29-34 depend from independent claim 1 and are therefore allowable over *Distributor Roles* and *Lowe's Superstores* for at least the same reasons as those presented above with respect to claim 1.

For at least the above reasons and the other relevant arguments of record, Applicant respectfully submits that *Distributor Roles* in view of *Lowe's Superstores* do

not render obvious claims 29-34. Accordingly, the section 103 rejection of claims 29-34 should be withdrawn.

REJECTION OF CLAIMS 35-39 UNDER 35 U.S.C. § 103

Claims 35-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstores*. This rejection is respectfully traversed.

Applicant respectfully submits that *Distributor Roles* in view of *Lowe's Superstores*, alone or in combination, do not disclose, teach or even remotely suggest a system enabling production of customized containerized liquid coatings in various, produced-to-order quantities over a range of volumes unrestricted by the use of industry standard volumes and container sizes. At most, *Distributor Roles* in view of *Lowe's Superstores* appears to disclose electronic ordering of products from a catalogue of pre-existing products, which thus does not equate to a customized solution in fulfillment of a customer order.

Further, *Distributor Roles*, *Lowe's Superstores* or other art of record, alone or in combination, do not disclose, teach or suggests at least:

"a system enabling production of customized containerized liquid coatings, the system comprising an electronic interface, coupled to a computer network, for allowing an ultimate consumer to place a customer order with a manufacturer specifying customer order information including indication of a particular volume and a custom color for a liquid coating; a customer order subsystem for receiving said customer order information over said computer network; a production subsystem for compiling said customer order information and processing the results of the compilation to yield production parameters; and a production line of said manufacturer capable of producing variable quantities of containerized liquid coatings in a plurality of custom colors, the production line operable in accordance with said production parameters yielded by said production subsystem to produce in a single batch a customer specified volume that is not an even multiple of gallons, quarts and pints and custom color of containerized liquid coating in accordance with said customer order information" (as recited in Claim 35); or

“a system enabling production of customized containerized liquid coatings in accordance with customer orders received electronically over the Internet, the system comprising an Internet web site allowing an ultimate consumer to input a customer order with a manufacturer specifying customer order information including indication of a particular volume and a custom color for a liquid coating, the Internet web site capable of providing customer assistance in the selection of a liquid coating appropriate to a given job as defined by the customer order information including identification of a custom color, recommendation of a liquid coating base, and calculation of an appropriate volume for the given job; a customer order subsystem for receiving over the Internet said customer order information; a production subsystem for compiling said customer order information and processing the results of the compilation to yield production parameters; and a production line of said manufacturer capable of adding blended liquid coating bases and colorants to containers of various sizes to produce containerized liquid coatings in a plurality of custom colors and volumes including volumes that are not an even multiple of gallons, quarts and pints, the production line operable in accordance with said production parameters yielded by said production subsystem to produce in a single batch a customer specified volume that is not an even multiple of gallons, quarts and pints and custom color of containerized liquid coating in accordance with said customer order information” (as recited in claim 38).

In addition, *Distributor Roles*, *Lowe's Superstores* and other art of record, alone or in combination, do not disclose, teach or suggest the additional features recited in dependent claims 36 and 37 such as:

“the customer order subsystem receives said customer order information over the Internet” (as recited in claim 36); or

“the interface includes a web site that provides assistance in the selection of liquid coating product appropriate to a given job as defined by information input by the ultimate consumer through the interface” (as recited in claim 37).

For at least the above reasons and the other relevant arguments of record, Applicant respectfully submits that *Distributor Roles* in view of *Lowe's Superstores* do not render obvious claims 35-39. Accordingly, the Patent Office is respectfully

requested to reconsider and withdraw the section 103 rejection of claims 35-39 should be withdrawn.

New Claims 40-50

New claims 40-50 are supported by the application as originally filed. Accordingly, no new matter is introduced by the addition of claims 40-50.

New claims 40-43 depend from claim 1, shown above to be allowable. Accordingly, Applicant respectfully submits that claims 40-35 are in condition for allowance for at least the reasons given above in connection with claim 1.

In addition, claims 40-43 are further patentably distinguishable over the cited references in that the cited references do not disclose, teach or suggest the additional features required by claims 40-43:

“wherein fulfilling customer orders includes only fractionally filling a container to less than full capacity with liquid coating product” (as recited in claim 40); or

“pricing said fractionally filled container in accordance with the fractional quantity of liquid coating product within said fractionally filled container” (as recited in claim 41); or

“wherein fulfilling customer orders includes containerizing liquid coating product in a container having a capacity that is not an even multiple of gallons, quarts and pints” (as recited in claim 42); or

“wherein fulfilling customer orders includes providing an ultimate consumer with a quantity of liquid coating product that is not an even multiple of gallons, quarts and pints” (as recited in claim 43); or

New claims 44-50 are believed to be allowable over the cited references because none of the cited references disclose, teach or suggest at least “A method enabling customized solutions for individual orders for containerized liquid coatings, the method comprising: electronically receiving an order for a liquid coating over a computer network, the order including a plurality of inputs relating to a quantity and color of liquid coating and a delivery address; controllably manufacturing in a single batch and containerizing a customer specified color and quantity of liquid coating in accordance with said inputs; and causing delivery of the customer specified quantity and color of

containerized liquid coating to the delivery address in accordance with said inputs” (as recited in claim 44).

In addition, dependent claims 45-49 are further patentably distinguishable over the cited references in that the cited references do not disclose, teach or suggest the additional features required by claims 45-49:

“wherein containerizing includes only fractionally filling a container to less than full capacity with liquid coating” (as recited in claim 45); or

“pricing said fractionally filled container in accordance with the fractional quantity within said fractionally filled container” (as recited in claim 46); or

“wherein containerizing includes containerizing liquid coating in a container having a capacity that is not an even multiple of gallons, quarts and pints” (as recited in claim 47); .

“controllably manufacturing and containerizing liquid coating product in customer specified quantities that are even multiple of gallons, quarts and pints” (as recited in claim 48); or

“simultaneously manufacturing the customer specified quantity of liquid coating in a single batch to enable the customer specified quantity of liquid coating to have a more uniform color consistency than an equivalent quantity produced in two or more separate batches” (as recited in claim 49).

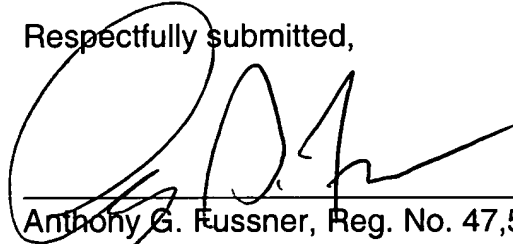
CONCLUSION

In view of the above amendments and remarks, it is believed that all stated grounds of rejection having been properly traversed, accommodated, and/or rendered moot. Applicant therefore respectfully requests reconsideration of this application and allowance of each of claims 1-4 and 6-50. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Applicant believes that the appropriate fees are included herewith. But the Patent Office is hereby authorized to charge Deposit Account No. 08-0750 for any additional fees or to credit any overpayments thereto.

Should there be any outstanding matters that need to be resolved in the application before allowance thereof, the Examiner is invited to contact Applicant's attorney Anthony G. Fussner (Reg. No. 47,582) directly at (314) 726-7502.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'AG Fussner', is written over a horizontal line.

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